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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,730	03/08/2002	Steven J. Catani	15117.0090	7337
23122	7590	12/28/2004	EXAMINER	
RATNERPRESTIA			KRISHNAN, GANAPATHY	
P O BOX 980			ART UNIT	
VALLEY FORGE, PA 19482-0980			PAPER NUMBER	

1623

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/092,730	CATANI ET AL.	
	Examiner	Art Unit	
	Ganapathy Krishnan	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-17, 19, 20, 22, 24-34, 46-49, 60-62 and 67-74 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-17, 19-20, 22, 24-34, 46-49, 60-62 and 67-74 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

The amendment filed 10/6/2004 has been received, entered and carefully considered.

The following information provided in the amendment affects the instant application:

1. Claims 1-12, 18, 21, 23, 35-45, 50-59, 63-66 and 75-86 have been canceled.
2. Claims 13 and 62 have been amended.
3. Remarks drawn to rejections under 35 USC 102 and 103

Claims 13-17, 19-20, 22, 24-34, 46-49, 60-62 and 67-74 are pending in the case.

The text of those sections of Title 35, U. S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 46-49, 60-61 and 71-74 are rejected under 35 U.S.C. 102(b) as being anticipated by Antenucci et al is being maintained for reasons of record.

Applicants have traversed the rejection arguing that Antenucci provides no numerical teaching regarding the level of purity and hence a prima facie case of anticipation is not presented.

This is not found to be persuasive.

The prior art of record teaches a composition comprising purified sucralose, which still seen to read on the instant claims. A declaration giving a side-by-side comparison of the instant sucralose with that of the prior art showing the difference in the level of purity would be favorably considered.

Claim Rejections - 35 USC § 103

Claims 13-20, 22-34, 62 and 67-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Navia et al (US 5498709) of record in combination with Catani et al (US 5977349) is being maintained for reasons of record.

Applicants argue that:

1. Navia reference does not teach removal of related chlorinated carbohydrates but teaches the separation of the entire reaction product from inorganic salts and there is no increased purity sucralose provided that has a lower amount of chlorinated carbohydrates relative to sucralose.

2. Catani reference does not teach the desirability of using adsorbent technology to remove related chlorinated carbohydrates prior to performing at least four crystallizations with recycling the mother liquor and there is nothing in Catani or Navia either alone or in combination that provides the motivation to make such more recrystallizations.

This argument is not found to be persuasive.

Navia teaches extraction of sucralose from a mixture that contains related chlorinated products and sucralose and further purification by crystallization and that the product can be purified by recrystallization till the desired purity level is reached. Navia, thus teaches a combination of both non-crystallization and crystallization steps and also the recycling of the mother liquor.

Catani teaches chromatographic method for separation of chlorinated sucrose from a mixture, one of which is sucralose. This method of Catani is a non-crystallization purification step.

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One of ordinary skill in the art will recognize that both references teach the isolation and purification of sucralose from impurities. Hence it would be obvious to one of ordinary skill in the art to combine a non-crystallization step with a crystallization step in a method to purify sucralose from related chlorinated impurities. One of ordinary skill in the art would also know that recycling of the mother liquor as suggested by Navia will also result in extraction of additional sucralose since a single extraction is not efficient. The number of recrystallizations performed to increase the purity is a routine process optimization.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

It is well established in patent law to combine relevant, pertinent references which may suggest doing what applicants have done, but for a different purpose or to solve a different problem than that asserted by the inventor. It is not necessary to establish prima facie obviousness that the prior art suggest their combination to achieve the same result discovered by the applicant.

Conclusion

Claims 13-17, 19-20, 22, 24-34, 46-49, 60-62 and 67-74 are rejected

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

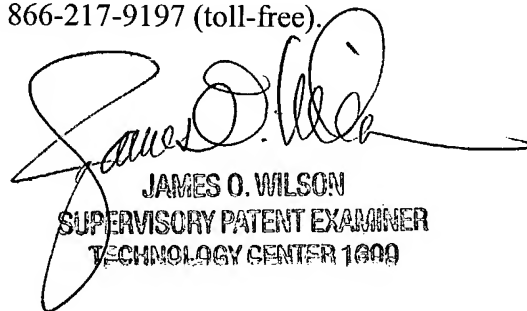
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ganapathy Krishnan whose telephone number is 571-272-0654. The examiner can normally be reached on 8.30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GK



JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
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